



Public Notice

Applicant:

Kieffer Enterprises
Incorporated

Date:

Published: June 16, 2004
Expires: June 30, 2004

**U.S. Army Corps
of Engineers**

In Reply Refer To:

Buffalo District **CELRB-TD-R RE: 1999-01616(6) Section: NY 404**

**Application for Permit under Authority of
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

Mr. Bernard G. Kieffer DBA Kieffer Enterprises, Inc., 8171 Main Street, Buffalo, New York 14221 is requesting Department of the Army (DA) authorization to maintain 0.28 acre of fill in a wetland, and to discharge fill into about 1.27 acres of wetland in connection with the development of the Lexington Woods Subdivision. The project site is located in the Town of Clarence, Erie County, New York.

On July 19, 2000 the applicant obtained authorization under Nationwide Permit No. 26 to discharge fill into 1.4 acres of wetland in connection with the construction of the subdivision. Under that authorization only 0.5 acre of wetland was impacted and the nationwide permit subsequently expired on February 11, 2002. Kieffer Enterprises, Inc. is now seeking DA authorization to discharge fill into 0.90 acre of wetland on lots 4 and 5 of the subdivision. The filling of the wetland on these two lots had been previously authorized.

Even though Kieffer Enterprises, Inc. had not filled all of the wetlands that were previously authorized, they did construct 2.13 acres of mitigation wetlands of 2.43 acres that were required by the special conditions of the earlier authorization.

During a recent on-site inspection by staff from this office, it was determined that about 0.28 acre of wetland on lot 3 had been impacted in the fall of 2003. The additional fills discussed in the previous paragraphs are in addition to the 0.44 acre fill that the applicant requested, and which was the subject of a 15 day public notice that was published on December 11, 2003. However, 0.07 acre of this wetland had been impacted last fall and is included in the 0.28 acre impact discussed in the above paragraphs. Kieffer Enterprises, Inc. is now proposing to maintain 0.28 acres of wetland fill on lot 3, discharge fill into wetlands on lots 4 and 5 that were previously authorized, and discharge fill into the remainder of the wetland on lots 3 and 4.

Kieffer Enterprises, Inc. is now requesting authorization to impact a total of 1.55 acres of wetland in order to complete the development of the subdivision.

In order to mitigate for the loss of 0.44 acre of wetland on lots 3

and 4 the applicant is proposing to create 1.0 acre of wet meadow/emergent marsh off-site on the fifty-two acre Zaepfel parcel. The Zaepfel property is located on Tonawanda Creek Road in the Town of Amherst, Erie County, New York. The existing 2.13 acres of mitigation will be considered in the evolution of the cumulative impacts to the wetland resources on-site.

The purpose of the project is to fill jurisdictional wetlands on lots 4 and 5, and to fill the wetland on lot 3 which will enable the applicant to sell one additional building lot.

Location and details of the above described work are shown on the attached maps and drawings.

Questions pertaining to the work described in this notice should be directed to Gary E. McDannell, who can be contacted by calling (716) 879-4322, or by e-mail at: gary.e.mcdannell@usace.army.mil

The following authorization(s) may be required for this project:

Water Quality Certification (or waiver thereof) from the New York State Department of Environmental Conservation.

There are no registered historic properties or properties listed as being eligible for inclusion in the National Register of Historic Places that will be affected by this project.

In addition, available evidence indicates that the proposed work will not affect a species proposed or designated by the U.S. Department of the Interior as threatened or endangered, nor will it affect the critical habitat of any such species.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-330. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

Comments should be sent to the U. S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, and should be marked to the attention of Gary E. McDannell, or by e-mail at: gary.e.mcdannell@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the

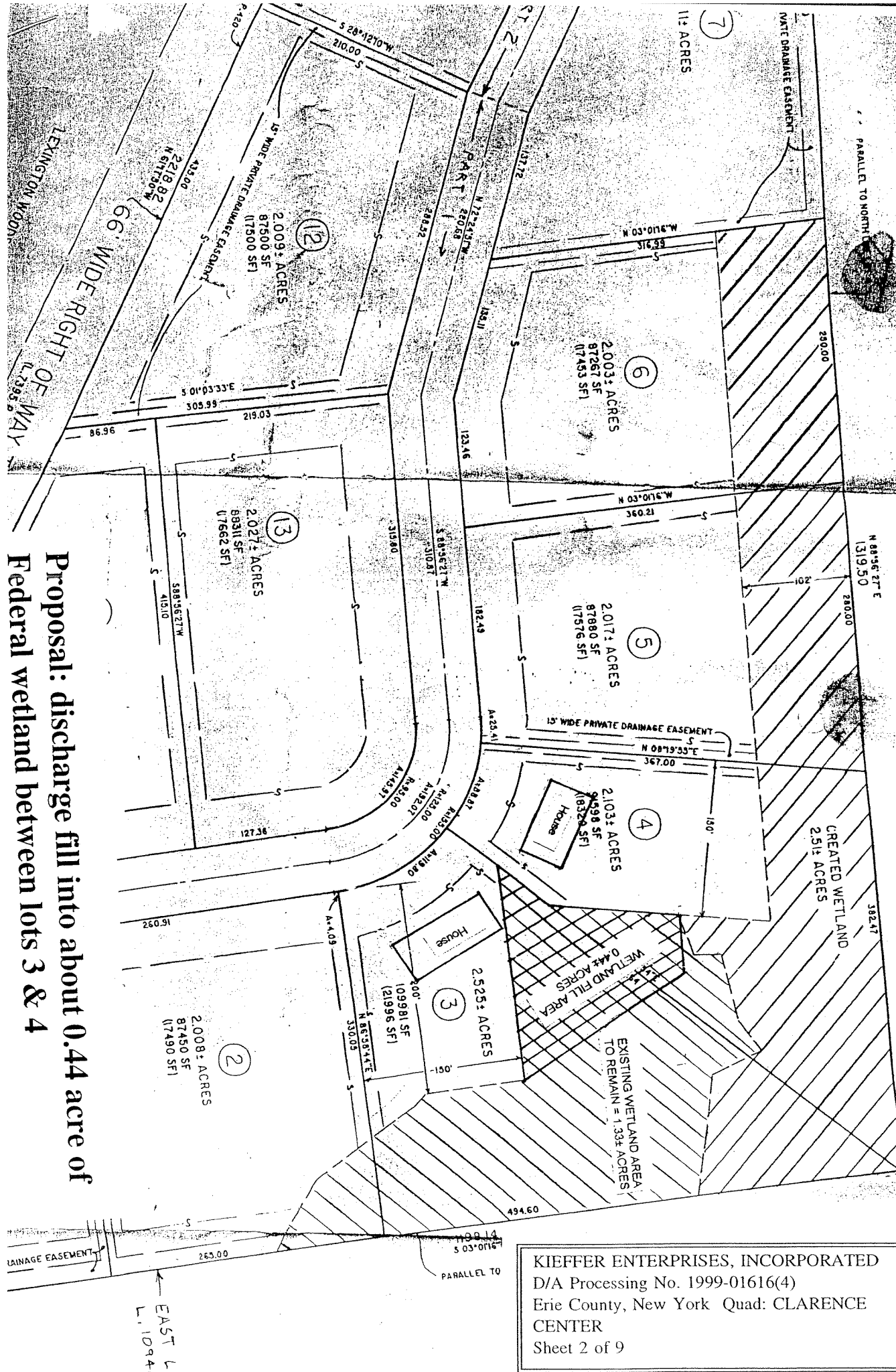
proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SIGNED

Thomas C. Switala
Chief, Regulatory Branch

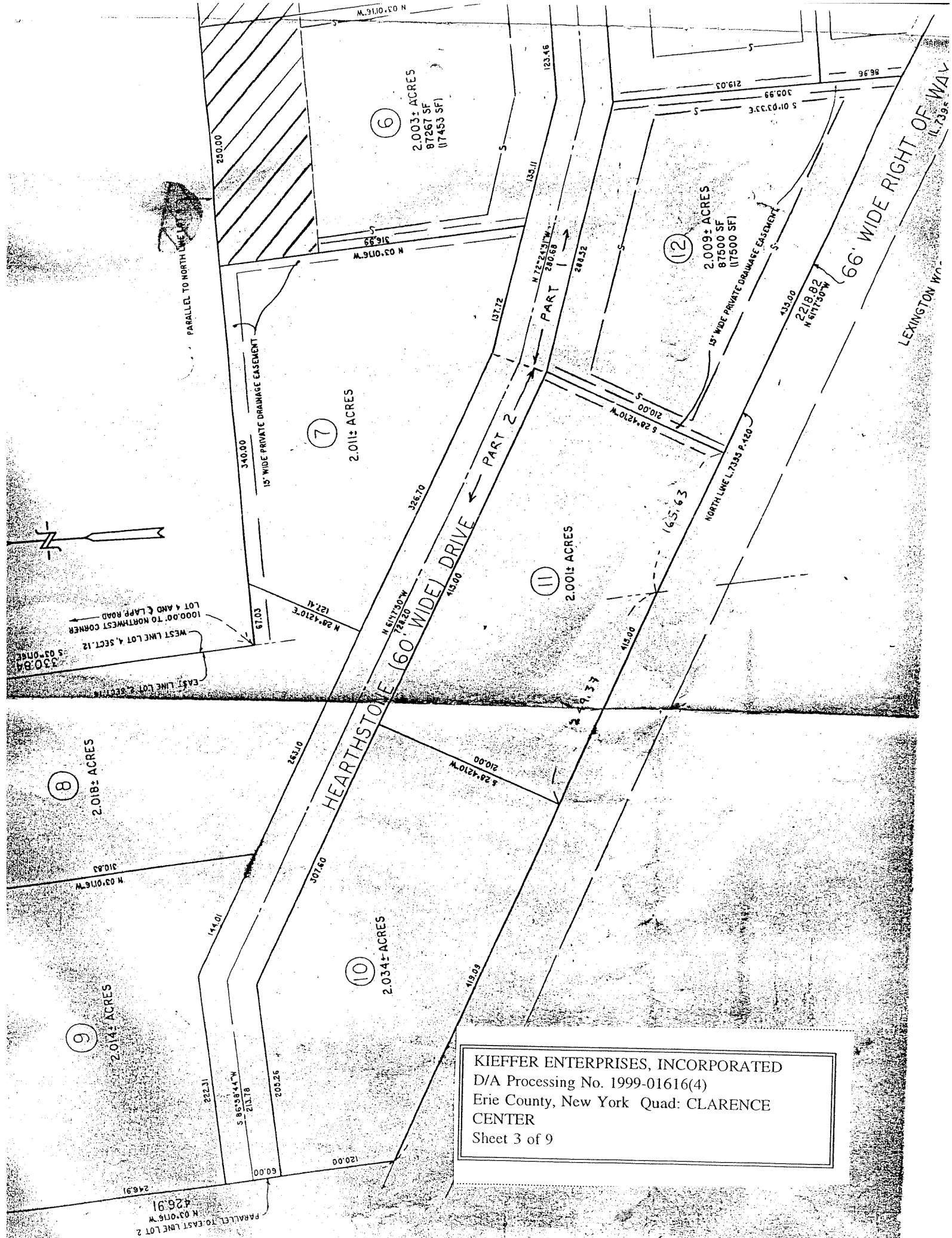
NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.



LEXINGTON HIGHWAY
L. 7395.8

Proposal: discharge fill into about 0.44 acre of
Federal wetland between lots 3 & 4

KIEFFER ENTERPRISES, INCORPORATED
D/A Processing No. 1999-01616(4)
Erie County, New York Quad: CLARENCE
CENTER
Sheet 2 of 9



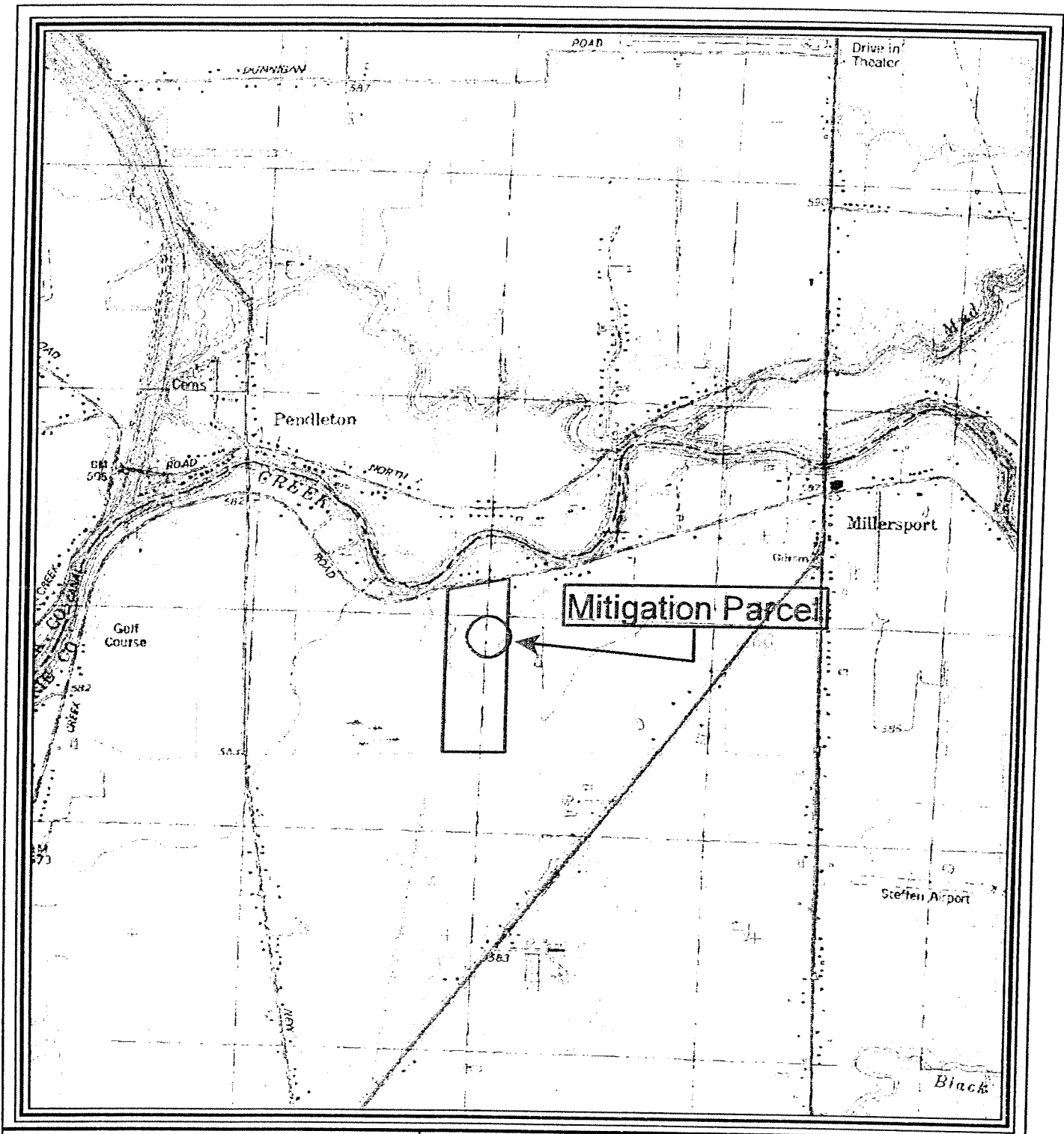


Figure 2.
USGS Quadrangle Map

Clarence Center, NY
Quadrangle
Scale 1:24000

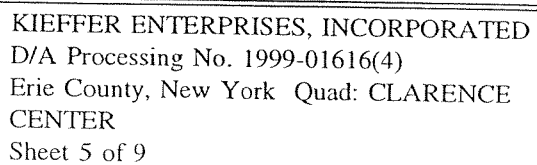


Lexington Woods Subdivision
Mitigation Site - Kieffer
Enterprises, Inc.
Tonawanda Creek Road
Town of Amherst
Erie County, New York

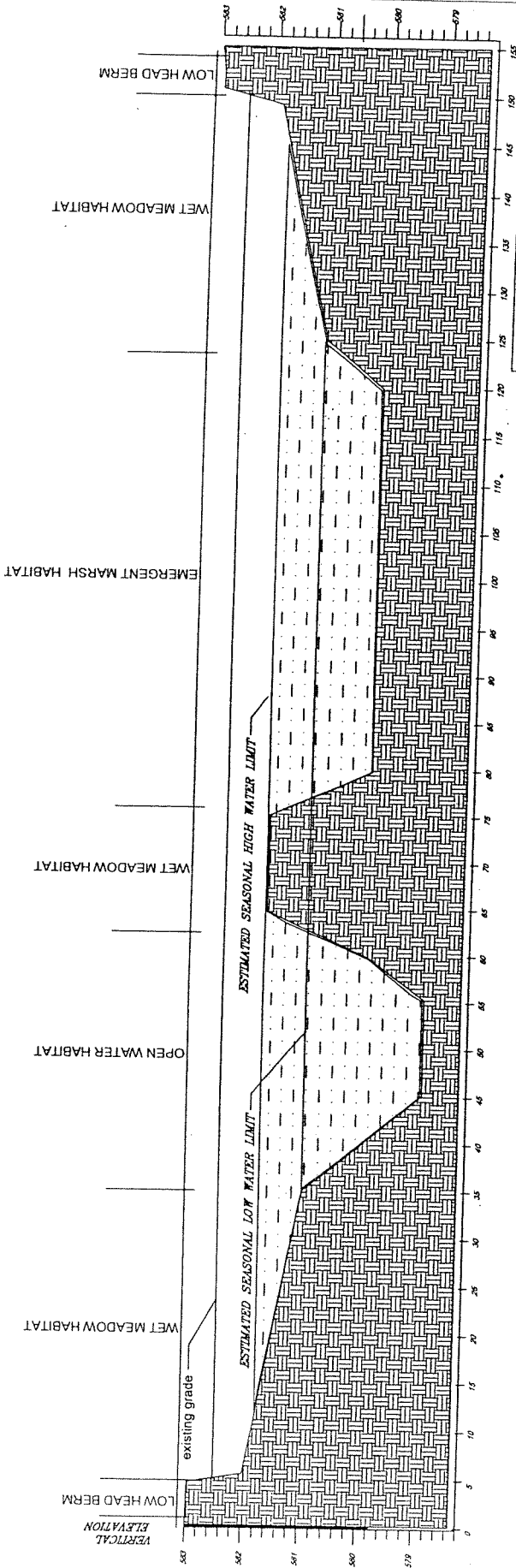
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Erie County, New York Quad: CLARENCE
CENTER
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38-5884

SHEET 1 OF 3



A - A CROSS-SECTION
SCALE = AS SHOWN



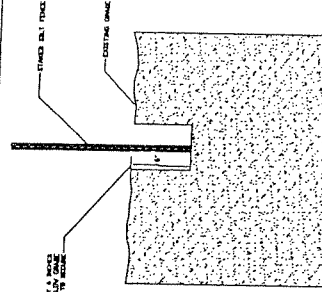
CONSTRUCTION NOTES:

1. ALL EXCAVATED AREAS TO BE OVEREXCAVATED BY 6" - 8" TO BE REPLACED WITH TOPSOIL.
2. FILL GRADES SHALL BE IRREGULAR AS DIRECTED BY WETLANDS CONSULTANT.
3. UPLAND HABITAT AREAS TO REMAIN AT EXISTING GRADE ELEVATION.
4. EMERGENT MARSH TO BE SEEDDED WITH NORTHEAST WETLAND DIVERSITY MIX SEED MIXTURE AT A RATE OF 3.25 LBS/AC, AS CALLED OUT ON SHEET 1.
5. ALL APPROPRIATE EROSION CONTROL METHODS TO BE APPLIED DURING CONSTRUCTION. FILTER FABRIC SILT FENCING TO BE STAKED AND EXCAVATED NOT LESS THAN 6 INCHES INTO SOIL ALONG ENTIRE BASE.
6. EXISTING MITIGATION TO BE FENCED WITH ORANGE CONSTRUCTION FENCING DURING CONSTRUCTION IN ACCORDANCE WITH SURVEY.

LEGEND

- WET MEADOW AREA = 0.60± ACRE.
- EMERGENT MARSH = 0.32± ACRE.
- OPEN WATER MARSH AREA = 0.08± ACRE.

SILT FENCE DETAIL



TOWN

LEXINGTON WOODS SUBLOTS 3 & 4
WETLANDS MITIGATION PLAN

TONAWANDA CREEK ROAD
TOWN OF AMHERST, NY



Wilson Environmental Technologies, Inc.
2805 Wehrle Drive, Suite 2, Williamsville, NY 14221
(716) 565-3000 Fax (716) 565-9994

Job No. K1164.01 9/03

SHEET 2 OF 2

KIEFFER ENTERPRISES, INCORPORATED
D/A Processing No. 1999-01616(4)
Erie County, New York Quad: CLARENCE
CENTER
Sheet 6 of 9

Subject: Department of the Army Permit Application No. 1999-01616(2); Lexington Woods Subdivision, Town of Clarence, Erie County,

PROPOSED PROTOCOL FOR ESTABLISHMENT OF
WET MEADOW - EMERGENT MARSH COMPLEX

- 1) Remove all vegetation with a bulldozer or similar equipment from the mitigation creation area as noted on the mitigation plan map.
- 2) Strip topsoil from the proposed impact wetland and stockpile for re-use as seedbed material within the mitigation area. **If soil is found to contain purple loosestrife and common reed grass plant species, clean topsoil will be used in the designated mitigation area.** No stockpiling of topsoil or subsoil will occur within the delineated wetland area.
- 3) Over-excavate to planned elevation and contour as indicated on the plan profile map to be provided and entitled Lexington Woods Mitigation/Creation Plan Sheet 1 of 2. The final shallow water emergent marsh will be a maximum of 24 inches in depth after the re-application 6 - 8 inches of topsoil material and seed with a wetland vegetation seed mixture (see below). Shrub and tree species along the margin of the tongues will be avoided by maintaining a proper construction distance.
- 4) Maintain slopes of 1:8 (V:H) or flatter within the area of moist-soil wet meadow construction. These areas are to be re-seeded with suitable mixture.
- 5) After planned elevations have been obtained, re-apply a minimum of 6-8 inches of topsoil over the entire excavated shallow water marsh area for the purpose of holding the seed mixture.
- 6) Seeding:
 - A. Prepare seeding area by scarifying soil with a York rake or similar equipment.
 - B. No fertilizer or lime will be necessary.
 - C. Seeding should be done before June 15 or after September 15 unless irrigated.

D. Emergent Marsh Wetland seed mixture: (SEE PLANTING SPECS ON SHEET 1 OF 2 OF THE MITIGATION CONCEPT PLAN)

E. Non-wetland/Transitional Zone Seeding Mixture:

<u>SPECIES</u>	<u>SEEDING RATE</u>	<u>APPLICATION AREA</u>
Smartweed (<i>Polygonum pennsylvanicum</i>)	15 lbs/acre	All depths at or below anticipated high water level

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Rice cut-grass (<i>Leersia oryzoides</i>)	3.25 lbs/acre	All depths at or below anticipated high water level
Meadow fescue (<i>Festuca pratensis</i>)	20 lbs/acre	Upland/marginally wet soils.
Redtop grass (<i>Agrostis alba</i>)	3 lbs/acre	Upland/marginally wet soils.

MONITORING SCHEDULE

Monitoring of the mitigation areas will be conducted for five years following the first full growth cycle. During the five year period, WET is proposing to assess the success of the mitigation creation during the second and third growing seasons in accordance with accepted USACE procedures. The purpose of the monitoring will be to determine if the plant community in the mitigation area has become dominated by FACW and obligate vegetation species. A per cent areal cover estimate of the herbaceous layer will be conducted using a random quadrat test to determine if a dominant FACW - OBL species cover has developed.

Within the mitigation creation area, soil and hydrology will also be monitored to determine if soil saturation/inundation conditions occur for a duration long enough to promote the development of hydric soil characteristics and hydrophytic vegetation. The soils should exhibit a higher degree of saturation within the upper 12 inches of the A-B Horizon. Ponding and saturation to the surface should be evident for a longer duration during the growing season.

In addition to vegetation and hydrology information, each monitoring report will contain a summary of wildlife activity in or adjacent to the mitigation wetland areas. Fixed station mitigation site photographs will accompany each report. Monitoring will Purple loosestrife and common reed grass (*Phragmites australis*) is an exotic, invasive species which can quickly become established in wetland areas. This undesirable species must be removed, either by hand pulling of young plants, by applying a commercial herbicide or through biological control. The broad-leaved herbicide which could be used is Rodeo (active ingredient, glyphosphate 53.5%). This herbicide is approved for use in or near fresh water wetlands. According to the manufacturer, Rodeo is non-volatile, non-toxic to animals, does not bioaccumulate in the food chain, and produces no residual soil activity.

Addition attempts at controlling purple loosestrife is through the use of biological methods. Currently the NYSDEC is experimenting with the use of two species of beetles, *Galerucella calmeriensis* and *G. pusilla*. The beetles are specific to purple loosestrife and were first introduced to North America in 1992. Currently the beetle has been introduced to several locations in the Tonawanda Creek watershed by the NYSDEC. *Galerucella calmeriensis* and *G. pusilla* have very similar life habitats. Adults emerge in the spring from hibernation in leaf litter and feed on the new leaves and shoots of purple loosestrife. The egg laying phase lasts approximately two months in the spring and eggs are laid in clusters of two to ten daily on the plant stem and in the leaf axils.

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A female can lay 300-400 eggs per year, and the adult lives 8 - 10 weeks. Larvae feed on bud, leaf, and stem tissue. Pupation takes place in the soil or ground cover near the plants. From egg to adult takes about 6 weeks, and there is generally one generation per year.

After the review of this proposed mitigation plan please provide me with any comment which you may have. I have include a Joint Permit Application along with both full size and 8.5"x 11" drawings. Should you find this package complete please issue the Nationwide 39 permit to Mr. Kieffer as he unable to continue construction until said permit is issued.